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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,319	04/18/2001	Gary Stephen Shuster	409475-30	8357

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EXAMINER	
CHOUDHURY, AZIZUL Q	
ART UNIT	PAPER NUMBER
2145	

MAIL DATE	DELIVERY MODE
08/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/837,319	SHUSTER, GARY STEPHEN	
	Examiner	Art Unit	
	Azizul Choudhury	2145	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: 1-20.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

JASON CARDONE AC
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: The arguments received are not deemed fully persuasive. The first argument involves the claim feature of transferring a packet from a higher level to a lower level network component. Applicant contends that such a feature is not taught by Kalkunte. The examiner disagrees with this assertion. Kalkunte teaches in column 4, lines 49-57 that data is passed from the pci bus interface (higher level) to the ethernet controller (lower level). The information is passed byte by byte but any transferred data is sent as a packet.

The second point of contention remarked upon by the applicant involves the claimed trait of "whereby the entire file is transferred at a rate that decreases with increasing file size." The applicant contends that the Kalkunte prior art does not teach such a trait. Such a trait however is inherent. It is inherent that when more packets are sent (i.e. larger file), the transfer rate slows down since more packets are sent through the same allotted space within a medium. As for the Kalkunte teaching that the delay can be set to zero doesn't mean that an increase in packets will increase speed. The delay is set to help control the flow of packets. The claimed "whereby the entire file is transferred at a rate that decreases with increasing file size," is referring an increase in the number of packets being sent. When more packets are sent without changing the bandwidth or transfer medium, it is absolutely inherent that their transfer rate will decrease.

The third point of contention remarked upon by the applicant involves increasing the defined delay period after each iteration of the repeating step. The applicant contends that the prior art fails to teach such a trait. The examiner disagrees with this assertion. Kalkunte teaches how the delay intervals are adjustable based on traffic and delays can be increased (column 3,lines 30-50, Kalkunte).

The fourth point of contention involves calculating delay from size or type. Kalkunte's design allows for network data transfer using packets. Networks allow the size of the packets to be set as claimed. Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, such as packet size, as claimed. Plus, it is inherent that when more packets are sent (i.e. larger file), the transfer rate slows down since more packets are sent through the same allotted space within a medium.

The final point of contention involves setting the defined number of information bits in the packet. The applicant contends that such a feature is not taught by the Kalkunte prior art. The examiner disagrees. Kalkunte teaches the length information existing within the header (column 4, lines 57-63).